

Notice of Allowability	Application No.	Applicant(s)	
	10/801,348	BROWN, GARTH DESMOND	
	Examiner	Art Unit	
	Patricia L. Hailey	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to a Request for Continued Examination filed on January 27, 2005.
2. ☒ The allowed claim(s) is/are 1-31.
3. ☒ The drawings filed on 16 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>01/27/05</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>03/21/05</u>. 7. <input type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on January 27, 2005, has been entered.

The submission includes an amendment to claims 30 and 31, to render them dependent on previously allowed claim 1.

Additionally, claim 37 has been canceled; no new claims have been added. Claims 1-36 and 38 remain pending in this application.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-31, drawn to a method of depositing metal particles dispersed on a particulate substrate, classified in class 427, subclass 115.
 - II. Claims 32-36, drawn to a particulate composition, classified in class 75, subclass various.
 - III. Claim 38, drawn to a fuel cell, classified in class 420, subclass 40.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process, such as by chemical or physical vapor deposition, or by admixing the recited components under standard temperature and pressure conditions (STP) as opposed to supercritical or near-supercritical conditions.

4. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions.

5. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Mitch Katz on March 21, 2005, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-36 and 38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mitch Katz on March 21, 2005.

The application has been amended as follows:

- a. *On page 24 of the Specification, in line 6, please delete the phrase "Several density" and insert therefor the word -Density-.*
- b. *On page 24 of the Specification, in line 6, please delete the phrase "are shown in Figure 13" and insert therefor the phrase -can be-; also, please delete "(in front of the word "generated".*
- c. *On page 24 of the Specification, in line 8, please delete the ")" after "(1994)"; also, in the same line, please delete "Note that", and change "below" to "Below".*

The Specification has been amended to remove a reference to Figure 13, which is not present in this application.

Allowable Subject Matter

9. This application is in condition for allowance except for the presence of claims 32-26 and 38 to inventions non-elected without traverse. Accordingly, claims 32-36 and 38 have been cancelled.
10. Claims 1-31 are allowed.

Reasons for Allowance

11. The following is an examiner's statement of reasons for allowance:

The prior art of record does not teach or suggest the subject matter of claims 1-31, especially the process step of employing a reducing agent to reduce the dispersed organometallic to form dispersed metal particles (step (e) of Applicants' claim 1, for example).

Wai et al. (U. S. Patent No. 6,132,491, Applicants' submitted art) is strongly similar to Applicants' claimed process, with the exception that this reference does not teach or reasonably suggest the presence of a **particulate** substrate.

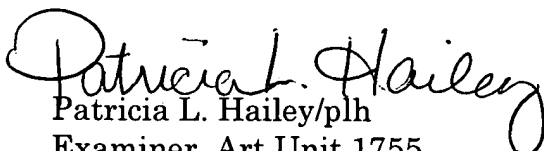
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

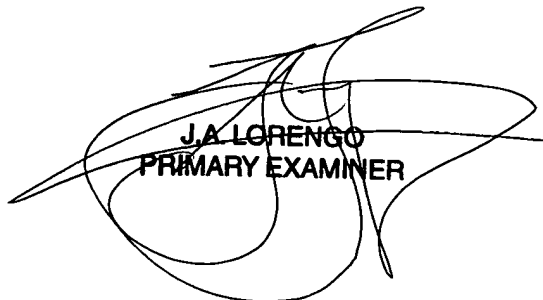
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Hailey whose telephone number is (571) 272-1369. The examiner can normally be reached on Mondays-Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patricia L. Hailey/plh
Examiner, Art Unit 1755
March 21, 2005


J.A. LORENCO
PRIMARY EXAMINER